

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

**FILE:**

B-219997.2

**DATE:** October 25, 1985

**MATTER OF:**

Advanced Electronic Applications, Inc.--  
Reconsideration

**DIGEST:**

1. Where protester has furnished nothing which establishes that contracting agency knew that licensing agreement which formed basis for sole-source determination was not firm, GAO is unable to conclude that sole-source determination lacked a reasonable basis when made.
2. Where contract provides choice of equipment to be furnished, whether contracting agency accepts one or the other is a matter of contract administration rather than contract modification that went beyond the original procurement that we would consider.

Advanced Electronic Applications, Inc. (AEA), requests reconsideration of our decision in Advanced Electronic Applications, Inc., B-219997, Sept. 25, 1985, 85-2 C.P.D.

¶ \_\_\_\_\_.

We affirm the decision.

In the decision, we held that the sole-source justification for the contract with Technical Systems Group (TSG) was not rendered invalid by the subsequent failure of TSG and AEA to reach a subcontract agreement after the contract was awarded to TSG. In that regard, the Navy had indicated that, when it made the sole-source award, it understood that AEA had granted TSG an exclusive license to market the component involved to the government. We stated that, while events did not materialize as the parties expected, the government's contract with TSG did provide for the use of equipment "equivalent" to that of AEA and that compliance with the contract concerned a matter of contract administration which is not for our consideration.

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In the request for reconsideration, AEA contends that the exclusive license was conditional upon TSG's and AEA's agreeing upon terms. However, AEA has furnished nothing which establishes that the Navy knew when the sole-source award was made that the license was conditional. It is well established that the protester has the burden of proving its case. Unico, Inc., B-216592, June 5, 1985, 85-1 C.P.D. ¶ 641. In the circumstances, we are unable to conclude that the sole-source determination lacked a reasonable basis when made.

Further, AEA contends that we should not have dismissed the protest as a matter of contract administration because it involves a modification that went beyond the original procurement that we would consider. However, as indicated in the earlier decision, the contract as awarded did provide for the utilization of equipment equivalent to that of AEA as an alternative to the AEA equipment. Therefore, we do not consider the situation to involve a modification outside the terms of the contract. Thus, whether the Navy receives and accepts equipment that it determined to be equivalent to the AEA product is a matter of contract administration.

*for Seymour Fox*  
Harty R. Van Cleve  
General Counsel